THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION No. 3429 OF 2003

Dated 25th July 2007

Between:

Kanaparthi Somulu

…Petitioner

and

The District Collector, Ongole,
Prakasam District & others

…Respondents

THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY
WRIT PETITION No. 3429 OF 2003

O R D E R:

The Revenue Divisional Officer, Ongole, the 3rd respondent herein, issued a notification, dated 8.4.2002, inviting applications for appointment of a Fair Price Shop dealer, for Chakrayapalem village of Addanki Mandal. The shop was earmarked for Physically Handicapped candidates. The petitioner, respondent No.4 and two others submitted their applications. Through his proceedings dated 24.4.2002, the 3rd respondent appointed the 4th respondent, as dealer. Feeling aggrieved by the same, the petitioner filed an appeal before the Joint Collector, the 2nd respondent. The appeal was dismissed on 29.6.2002. The petitioner filed a revision before the District Collector, the 1st respondent. The revision was also dismissed on 2.12.2002. Hence, this writ petition.

It is contended that the 4th respondent did not possess the

minimum educational qualifications, and still, he was appointed in preference to the petitioner. Petitioner states that the view taken by respondents 1 to 3, as to the minimum educational qualifications, for the appointment of Fair Price Shop dealer, is contrary to the notification dated 8.4.2002, as well as to the rules prescribed by the Government.

No counter affidavit is filed by respondents 1 to 3. The 4th respondent filed a counter affidavit, stating that his selection does not suffer from any illegality, or infirmity. He contends that the petitioner is not a Physically Handicapped person, and that the father of the writ petitioner is employed as a village servant, for the past 20 years.

Heard the learned counsel for the petitioner and learned Government Pleader for Civil Supplies, and perused the counter affidavit filed by 4th respondent.

The only controversy in this writ petition is, as to whether the 4th respondent holds the requisite qualification, for being appointed as Fair Price Shop dealer. In the notification issued by 3rd respondent, it is clearly stated that only those candidates, who have passed 10th class, must apply. This is based upon the guidelines issued by the Government, from time to time, in the matter of appointment of Fair Price Shop dealers. From a perusal of the concerned G.Os., it is evident that relaxation is given only in cases, where candidates with requisite educational qualifications are not available. Such a contingency does not exist in the instant case.

Out of four candidates, who submitted applications, one was

found to be not qualified, on the ground that he is not physically handicapped. The cases of the petitioner and another person, by name Gogulamudi Nagaraju, were rejected, on the ground that they did not fare well in the interview. The order passed by the 3rd respondent is silent about the qualifications held by 4th respondent. The relevant portion of the order reads as under:

> "Out of the above three applicants who have attended for both written and oral tests on 22.4.2002, Sri Kanuparthi Swamulu S/o.Anjaneyulu and Gogulamudi Nagaraju S/o.Punna Rao have passed 10th class, the minimum requisite qualification, but both of them did not fare well in both the tests. The 3rd person, Sri Dodda Rama Krishna S/o.Kotaiah has fared well in both written and oral tests, he is a person of with 50% PH. I feel he cannot do other labour work except F.P.Shop business, he is capable of running F.P.shop on his own and he is found to be a suitable candidate for appointment as the F.P.shop in question."

When the petitioner preferred an appeal, the 2nd respondent took the view that the qualification for the post is 9th class. No reference is made to any rule, or provision, in support of this. The 1st respondent simply accepted the view taken by the 2nd respondent, and dismissed the revision preferred by the petitioner. On the other hand, he took the view that pass in 7th class would be sufficient. It is only when the candidates with requisite qualifications are not available, that recourse can be had to the candidates with 7th class. Clause (5) of the Annexure appended to G.O.Ms.No.53, Consumer Affairs (F&CS) Department, dated 6.10.1993, reads as under:

> "**5. Minimum General Educational Qualifications**:-
>
> 5.1. A pass in 10th class shall be the minimum general educational qualification required for appointment as

Fair Price Shop Dealer;

a) Persons possessing the minimum general educational qualifications and the persons having higher qualifications, if applied, shall be treated equally for the purpose of appointment; and

b) Where no candidate is available with the said minimum general educational qualifications, a candidate possessing a lesser educational qualification, which shall not be less than a pass in 5th class, if applied, may be considered for appointment."

It is represented that in G.O.Ms.No.198, which hold the field at the relevant point of time, identical provision is contained. Therefore, it is evident that the question of consideration of candidate, with a qualification less than pass in 10th class, would arise, if only the candidates with those qualifications, are not available. In the instant case, admittedly the petitioner and another candidate possessed the qualification. Therefore, the impugned proceedings cannot be sustained.

The writ petition is, accordingly, allowed. The 3rd respondent is directed to consider the matter, afresh, and pass appropriate orders, within a period of six weeks, from the date of receipt of a copy of this order. At the time of reconsideration, the 3rd respondent shall verify the relevant provisions, as well as the genuinety of the certificates produced by the candidates, including the petitioner and 4th respondent. Till such time, the existing arrangement shall continue. There shall be no order as to costs.

25th July 2007

PAN